

立法會

Legislative Council

LC Paper No. LS38/06-07

**Paper for the House Committee Meeting
on 23 February 2007**

Legal Service Division Report on Shenzhen Bay Port Hong Kong Port Area Bill

I. SUMMARY

- 1. Objects of the Bill** To declare an area in the Shenzhen Bay Port in the Mainland as the Shenzhen Bay Port Hong Kong Port Area and to apply the laws of Hong Kong in the declared area.
- 2. Comments** The Bill makes provisions to declare the geographical area of the Hong Kong Port Area, and for it to be operated as a closed area. The laws of Hong Kong would apply in the Area, and Hong Kong courts would have jurisdiction to hear and determine matters in respect of the Area. The Chief Executive in Council would have power to modify or exclude any enactment from application. The Bill also makes provisions for legal rights and obligations already in existence at the commencement of the Bill, and those acquired, accrued or incurred after commencement.
- 3. Public Consultation** The Administration has consulted the Hong Kong Bar Association and the Law Society of Hong Kong in January 2006 on the proposed approach to deal with territorial limits of rights and obligations. Preliminary feedback was that they do not object to the proposed approach. The Administration has also consulted the Hong Kong Federation of Insurers in January 2006 on the impact of the arrangement on insurance policies. Feedback was that it appeared to the Federation that it was quite unlikely that the co-location arrangement per se would trigger a premium increase across the board, and that the Federation will take a definitive view on the exact arrangements to extend the territorial limits of certain insurance policies to cover the Hong Kong Port Area upon receipt of the Bill.
- 4. Consultation with LegCo Panel** On 7 March 2006, the Panel on Security was consulted on the Administration's proposals to implement the arrangement to co-locate the customs and immigration facilities of the Mainland and Hong Kong on the Mainland. Members of the Panel raised various questions and made certain suggestions.
- 5. Conclusion** The Bill involves applying the laws of Hong Kong in an area outside the boundaries of Hong Kong, and would have implications on various existing legal rights and obligations. Members have expressed various concerns on the operation, employment and insurance aspects of the arrangements proposed in the Bill. The Legal Service Division is still scrutinizing the Bill, and recommends members to set up a Bills Committee to consider the Bill in detail.

II. REPORT

Objects of the Bill

- (a) To declare an area in the Shenzhen Bay Port in the Mainland as the Shenzhen Bay Port Hong Kong Port Area;
- (b) to apply the laws of Hong Kong in the Hong Kong Port Area, and to provide for the jurisdiction of Hong Kong courts;
- (c) to extend the territorial limit of certain pre-existing rights and powers obligations to include the Hong Kong Port Area;
- (d) to make provisions for the construction of certain documents made subsequent to the declaration of the Hong Kong Port Area; and
- (e) to make provisions for related purposes.

LegCo Brief Reference

2. SBCR 3/2098/02 Pt. 32 dated 6 February 2007 issued by the Security Bureau.

Date of First Reading

3. 7 February 2007.

Comments

4. The events leading to the introduction of the Bill are set out in the preamble of the Bill. In short, at the 24th Meeting of the Standing Committee of the Tenth National People's Congress, it was considered necessary to set up a Hong Kong Port Area at the Shenzhen Bay Port especially for customs clearance and inspection of people, vehicles and goods in order to alleviate the mounting pressure on land control points.

5. On 31 October 2006, the Standing Committee of the National People's Congress decided-

- (a) the Hong Kong Special Administrative Region (HKSAR) is authorized to exercise jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port according to the laws of HKSAR from the day on which the Shenzhen Bay Port commences operation, and HKSAR is to administer the Hong Kong Port Area at the Shenzhen Bay Port as a closed area;
- (b) the area of the Hong Kong Port Area at the Shenzhen Bay Port will be stipulated by the State Council; and

- (c) the land use period of the Hong Kong Port Area at the Shenzhen Bay Port will be determined by the State Council according to the provisions of the relevant laws.

6. By the "Official Reply of the State Council Concerning the Area of the Hong Kong Port Area at the Shenzhen Bay Port over which the Hong Kong Special Administrative Region is Authorized to Exercise Jurisdiction and the Land Use Period" dated 30 December 2006, the State Council-

- (a) stipulated the area of the Hong Kong Port Area at the Shenzhen Bay Port (the Stipulated Area); and
- (b) determined that the land use right of the Stipulated Area be acquired by HKSAR by way of a lease under a lease contract for State-owned land signed between HKSAR Government and the People's Government of the Shenzhen Municipality of Guangdong Province, that the land use period shall commence on the day on which the Shenzhen Bay Port commences operation and shall expire on 30 June 2047, and that with the State Council's approval of a submission made after the parties' mutual consultation and submitted in accordance with the relevant procedures, the land use right may be terminated earlier or the lease may be renewed after its expiry.

7. This Bill seeks to provide the local legislation to declare the Shenzhen Bay Port Hong Kong Port Area and to apply the laws of Hong Kong in the declared area. The content of individual clauses is set out in the Explanatory Memorandum and the LegCo Brief. The more salient features of the Bill are highlighted below for members' reference.

8. Clause 3 declares the geographical area of the Hong Kong Port Area. According to the LegCo Brief, the area covers the facilities and buildings within the Hong Kong Port Area that are above and below the ground, on and above the bridge surface or within the bridge deck; and any air space (above and below the ground or surrounding the bridge) and subterranean soil reasonably necessary for the operation, repair and maintenance of the facilities and buildings. As provided in clause 4, the Hong Kong Port Area would be a closed area for the purposes of the Public Order Ordinance (Cap. 245) and any other enactment that applies to a closed area.

9. Under clause 5, the laws of Hong Kong apply in the Hong Kong Port Area, except otherwise provided by any enactment enacted or made on or after the Relevant Date (defined in clause 2 as the date on which both sections 3 and 5 come into operation). In this connection, clause 5 proposes to empower the Chief Executive in Council to, by order published in the Gazette, modify any enactment in its application in the Hong Kong Port Area or exclude any enactment from the laws of Hong Kong that apply in the Hong Kong Port Area. Such orders would be subject to the approval of the Legislative Council (i.e. by way of resolutions under the positive procedure).

10. Under clause 7, Hong Kong courts would have jurisdiction to hear and determine any cause or matter arising from the operation of the Ordinance as enacted, and would have the power to make orders that adjudicates on, confers or imposes a right or obligation the territorial limit of which is confined to, or includes, the Hong Kong Port Area.

11. Part 3 of the Bill makes provisions for pre-existing (defined as acquired, accrued or incurred before the Relevant Date) rights and obligations. Clause 8 has the effect of stating that pre-existing rights or obligations are not affected. However, to ensure effective law enforcement and continuity of certain essential services in the Hong Kong Port Area, clause 9 extends to the Hong Kong Port Area certain pre-existing rights or obligations specified in Schedule 2 (examples include deportation orders and removal orders, and various licences, permits, approval etc. like professional qualifications and driving licences). Under clause 10, pre-existing court orders specified in Schedule 4 (examples include prohibition orders, warrants of arrest, court orders admitting a barrister or solicitor, certain detention orders and injunction orders) would also be extended. The Chief Executive in Council may, by order published in the Gazette, amend Schedules 2 and 4. Such orders would be subsidiary legislation subject to the scrutiny of the Legislative Council under the negative procedure.

12. Pre-existing rights or obligations arising from documents of a private nature (e.g. wills and contracts) would not be affected. The Administration intends to leave to the parties concerned to vary the documents to cover the Hong Kong Port Area as they see fit.

13. Part 4 of the Bill contains provisions which would assist in the construction of future (defined as acquired, accrued or incurred on, or made on or after, the Relevant Date) rights, obligations, documents and court orders.

14. According to paragraph 36 of the LegCo Brief, before the commissioning of the Hong Kong Port Area, the Administration would make certain subsidiary legislation under existing ordinances. The subsidiary legislation is intended to govern traffic control and immigration detention.

Public Consultation

15. According to paragraph 43 of the LegCo Brief, the Administration has consulted the Hong Kong Bar Association and the Law Society of Hong Kong in January 2006 on the proposed approach to deal with territorial limits of rights and obligations in the light of the setting up of the proposed Hong Kong Port Area. Preliminary feedback is that they do not object to the proposed approach. The Administration has also consulted the Hong Kong Federation of Insurers in January 2006 on the impact of the co-location arrangement on insurance policies. The feedback was that it appeared to the Federation it was quite unlikely that the co-location arrangement per se would trigger a premium increase across the board, and that the Federation will take a definitive view on the exact arrangements to extend the territorial limits of certain insurance policies to cover the Hong Kong Port Area upon receipt of the Bill.

Consultation with LegCo Panel

16. At its meeting on 7 March 2006, the Panel on Security was consulted on the Administration's proposals to implement the arrangement to co-locate the customs and immigration facilities of the Mainland and Hong Kong on the Mainland. Members of the Panel raised queries about the Administration's proposals, including-

- (a) whether the Chief Executive in Council could, in addition to the issuance of an order to modify or exclude the application of any legislation to the Hong Kong Port Area, issue another order to a totally different effect from that of the excluded legislation;
- (b) whether only entry clearance but not exit clearance at control points should be conducted;
- (c) whether the requirement for staff members of the Immigration Department to work at Hong Kong Port Area would amount to unilateral change of the terms and conditions of employment; and
- (d) the impact on the employees' compensation coverage for staff of the Immigration Department working there, and coverage of insurance policies procured by individuals.

17. A member suggested that the exclusion of application of legislation should be made by way of primary legislation rather than subsidiary legislation and, if the exclusion were to be made by subsidiary legislation, such subsidiary legislation should be subject to positive vetting.

18. The Panel had received a submission from the Hong Kong Immigration Department Staff Association.

Conclusion

19. The Bill involves applying the laws of Hong Kong in an area outside the boundaries of Hong Kong, and would have implications on various existing legal rights and obligations. Members have expressed various concerns on the operation, employment and insurance aspects of the arrangements proposed in the Bill. The Legal Service Division is still scrutinizing the Bill, and recommends members to set up a Bills Committee to consider the Bill in detail.

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15 February 2007